

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YOLMA HAYLETT and KENNETH EASTMOND,

Plaintiffs,

-against-

CITY OF NEW YORK; Correction Officer BRUCE
SUTTON¹,

Defendants.

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I. THE FULL CAPTION OF THE ACTION

The full caption appears above.

Defendant City of New York respectfully requests that the caption be amended to
the following:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YOLMA HAYLETT and KENNETH EASTMOND,

Plaintiffs,

-against-

CITY OF NEW YORK and BRUCE SUTTON,

Defendants.

¹ Defendant City of New York objects to Bruce Sutton being referred to in the caption as a Correction Officer, as Mr. Sutton is not now and never was employed as a Correction Officer. Accordingly, Defendant City of New York respectfully requests that "Correction Officer" be stricken from the caption of the case so as not to mislead or confuse the jury.

Plaintiffs object to amendment of the caption on the grounds that Mr. Sutton identified himself to 911 during the incident as an “off duty peace officer, Corrections,” and, according to documents generated by the City, identified himself in a similar manner to the NYPD officers who responded to the scene.

II. THE NAMES, ADDRESSES AND TELEPHONE AND FAX NUMBERS OF TRIAL COUNSEL

For Plaintiffs

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For Defendant City of New York²

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III. BRIEF STATEMENTS AS TO SUBJECT MATTER JURISDICTION

Plaintiffs

This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the Constitution of the United States. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343 and 1367(a). This Court has supplemental jurisdiction over the New York State claims pursuant to 28 U.S.C. § 1367.

City Defendant

Defendant City of New York respectfully states that there is no federal subject matter jurisdiction over the City of New York

IV. BRIEF SUMMARIES OF CLAIMS AND DEFENSES

Plaintiffs’ statement as to claims remaining to be tried:

1. Unlawful Stop & Search (federal).³

² Bruce Sutton is not represented by the Office of the Corporation Counsel.

³ Defendant Sutton has never answered plaintiffs’ complaint and has been held in default. See DE #17, 21 23, 24, 25, 28, 32, 33, 35, 42 and orders dated May 10, 2016, August 8, 2016,

2. False Arrest (federal).
3. False Arrest/Imprisonment (state law).
4. Assault (state law).
5. Negligence; Negligent Hiring/Training/Retention/Entrustment (state law).
6. Intentional Infliction of Emotional Distress (state law).
7. Deliberate Indifference to Safety (federal).

Plaintiffs' statement as to claims previously asserted which are not to be tried:

Plaintiffs asserted, but subsequently voluntarily dismissed, state law battery claims.

City Defendant's Statement:

1. Plaintiffs fail to state a claim.
2. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct or the culpable or negligent conduct of third parties and was not the proximate result of any act of defendant City of New York.
3. Plaintiffs provoked or were at fault for any incident.
4. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the State of New York or any political subdivision thereof.
5. Punitive damages cannot be assessed against the City of New York.
6. Plaintiffs failed to mitigate their alleged damages.

V. A STATEMENT AS TO WHETHER THE CASE IS TO BE TRIED WITH OR WITHOUT A JURY, AND THE NUMBER OF TRIAL DAYS NEEDED

The case is to be tried with a jury. The trial should last 2-3 days.

VI. STATEMENT AS TO CONSENT TO A MAGISTRATE

The parties do not consent to trial by the assigned U.S. Magistrate Judge.

VII. STIPULATIONS

None.

August 16, 2016, August 24, 2016, September 1, 2016, September 7, 2016, October 13, 2016 and January 26, 2017.

**VIII. NAMES AND ADDRESSES OF WITNESSES AND BRIEF STATEMENT
FO EXPECTED TESTIMONY**

Plaintiffs

1. Yolma Haylett – Will testify about road rage incident and aftermath.
2. Kenneth Eastmond – Same.
3. Bruce Sutton – Same.
4. Matthew Patel – Eyewitness to car stop.
5. Stephen Louis – Same.
6. Investigator Alexandria Maldonado – Will testify about events at the scene following the stop.
7. Investigator Weston Thompson – Same.
8. Sergeant Manuel Rossello – Same; will also testify to discussions with Legal Bureau.⁴
9. Mr. Mendelson, Legal Bureau – Will testify about conclusion that Sutton was acting in scope of employment.⁵
10. Deputy Director of Investigations Ruben Benitez – Will testify about statements made by Sutton regarding events.
11. Investigator Chimere Spaulding – Same; will also testify about DOC's investigation and conclusions.
12. Inna Markhasina, MD – Will discuss Mr. Eastmond's counseling and authenticate JNS counseling records.⁶
13. Such custodians as are necessary to authenticate any documents used at trial.

Defendant⁷

1. Captain Nathaniel Bialek- will testify regarding the duties and responsibilities of investigators in the Department of Correction.
2. Sergeant Manuel Rossello –will testify regarding events at the scene of the incident.

IX. DESIGNATIONS OF DEPOSITION TESTIMONY

N/A – no depositions conducted.

⁴ Defendant City of New York objects pursuant to FRE 402, 403, 802

⁵ Defendant City of New York objects pursuant to FRE 402, 403, 702, 802

⁶ Defendant City of New York objects pursuant to FRE 402, 403, 802 and FRCP 26 and 37

⁷ Defendant City of New York reserves the right to call any of the witnesses listed on plaintiffs' witness list.

X. EXHIBIT LIST**Plaintiffs**

Exhibit	Description of Item	Objection
1	Sprint Audio	FRE 403 and 802
2	Surveillance Video	FRE 403 and 802
3	Investigative Documents (Def1-220, 422-423)	FRE 402, 403, 802
4	Sutton Personnel Records (Def221-422)	FRE 402, 403, 802
5	Treatment and prescription records from JNS Counseling (P1-3)	Defendant City was never provided with these documents during discovery and FRE 402, 403, 802, 902
6	Treatment records from Counselor Smith	Defendant City was never provided with these documents during discovery and FRE 402, 403, 802, 902
7	Sprint Report (Def432-444)	FRE 402, 403, 802, 803
8	Photographs of Scene (Def423-431)	FRE 402, 403, 902
9	Cell Tower Locations (Def445-446)	FRE 402, 403, 802, 902

Defendant City of New York⁸

Exhibit	Description of Item	Objection
A	Department of Correction Investigation File pertaining to this Incident (DEF1 - DEF220)	None; but plaintiffs note that the City has objected to these documents (Plaintiffs'

⁸ Defendant City of New York reserves the right to supplement its respective list of exhibits based on any in limine rulings. Defendant City of New York further reserves the right to use any exhibit listed by plaintiffs herein.

		Exhibit 3).
B	Title 38 of the Rules of the City of New York, Chapter 13-01(c)	FRE 401
C	Plaintiffs' Social Media	FRE 401, 403, 802; Plaintiffs have not been provided with this material and do not know to what defendants refer.
D	Paperwork pertaining to Plaintiffs' Arrests	FRE 401, 403; Plaintiffs have not been provided with this material and do not know to what defendants refer.
E	50-h Transcript of Yolma Haylett	FRE 401, 403
F	50-h Transcript of Kenneth Eastmond	FRE 401, 403
G	Complaint filed in this action	FRE 401, 403
H	911 Audio	
I	Surveillance Video	

Dated: September 1, 2018

U.S.D.J. WILLIAM F. KUNTZ II